

Chapter 5: Early Groundwork Toward a Glacier Bay Fisheries Policy

Tom Ritter Succeeds Bob Howe as Superintendent

Superintendent Bob Howe retired in the spring of 1975. In retirement Howe divided his time between a cabin in Gustavus and a home in Friday Harbor, Washington. He enjoyed being active, and at Gustavus often helped his close friend, Jim Mackovjak, who owned Point Adolphus Seafoods. Howe particularly liked to be on the dock—which offered fresh air, a view and a chance to be among the fishermen.

Tom Ritter arrived at Bartlett Cove in June 1975. As Glacier Bay's superintendent, Ritter was preoccupied mostly with a controversial mining issue: the Newmont Mining Co. was seriously studying the feasibility of establishing a major nickel-copper mining operation within the monument. Development of the prospect, which was located beneath the Brady Glacier, would have required the establishment of a community of some 4,000 at Dixon Harbor and the annual disposal of some six million tons of waste rock. Another issue high on Ritter's agenda had to do with cruise ships, particularly their effect on humpback whales. A study in Glacier Bay by Juneau researchers Chuck and Virginia Jurasz done while Ritter was superintendent determined that cruise ships appeared to have a significant impact on humpback whales.³²⁰ The concerns of the politically powerful cruise ship industry could not be taken lightly by the NPS. Neither could those of the national environmental groups for whom "Save the Whales" had become a rallying cry.

Because commercial fishing was specifically allowed by NPS policy, and because the use of Glacier Bay by commercial fishermen was declining (as measured by the number of vessels that fished), the commercial fishing issue was of low priority while Ritter was superintendent.³²¹ This is not to say that the marine environment was ignored.

Ritter was a firm believer in the need to understand the relationship and interaction of all factors affecting an ecosystem. A considerable amount was known about Glacier Bay's terrestrial ecosystem, but Ritter recognized the importance of understanding Glacier Bay's marine ecosystem as well. With his encouragement, the NPS in 1978 commissioned the first

conceptual model of Glacier Bay's marine ecosystem.³²² *The Glacier Bay Marine Ecosystem: A Conceptual Ecological Model* was the work of Lynne Zeitlin Hale, who was affiliated with the University of Rhode Island, and R. Gerald Wright, an NPS scientist. The report was completed in 1979.³²³ Though crude by today's standards, it was an attempt to abstract from existing information and general ecosystemic reasoning a framework for better understanding Glacier Bay's marine ecosystem. The model was also intended to serve as the basis for future studies, which, given the focus of the time, would likely have involved humpback whales.

No quantitative analysis was provided, but the report looked at pathways of potential impacts—such as commercial fishing—on the ecosystem. The major impacts of commercial fishing, according to Hale and Wright, were probably species-specific. The researchers suggested that "The role of these potentially impacted species in the complex web of this marine ecosystem should be one of the Park Service's highest research priorities."³²⁴

Very significantly, the findings of the Hale-Wright report influenced Ritter during the final days of the Alaska National Interest Lands Conservation Act (1980) negotiations to suggest that the Beardslee Islands area be designated as wilderness. (Ritter was at the time superintendent of Voyageurs N.P., but he was in Washington, DC on Park Service business and, as someone familiar with Glacier Bay, asked his advice.

Superintendent John Chapman

John Chapman replaced Tom Ritter at Glacier Bay in 1978. Cruise ships and whales were the reigning issues of his superintendency. At the hand of James Watt, President Ronald Reagan's Secretary of the Interior, Chapman's efforts to restrict cruise ships in Glacier Bay to protect endangered humpback whales reportedly cost him his position, as well as that of the regional director.

Although commercial fishing was actually declining in Glacier Bay during Chapman's superintendency, it was during this period (1978-1983) that the NPS first used its



authority to eliminate a commercial fishery: commercial shrimping in Glacier Bay proper was prohibited to protect a food source for humpback whales. Additionally, the first substantial research report on Glacier Bay's marine ecosystem was completed under Chapman's watch. And while Chapman was superintendent, the DOI, for the first time, comprehensively considered the appropriateness of commercial fishing in the national park system. In addition, Congress during his tenure passed the Alaska National Interest Lands Conservation Act (ANILCA), which expanded Glacier Bay N.M. and designated it as a national park and preserve. Under ANILCA the Beardslee Islands area and other waters of Glacier Bay N.P. were designated as wilderness, where commercial fishing legally should have, but did not, come to a close. Finally, while Chapman was superintendent, Tom Traibush and Charlie Clements cast their first commercial crab pots into the waters of Glacier Bay, and Dan Foley established a small seafood processing company, Icy Passage Fish, in Gustavus.

The NPS's Policy—Official and De Facto—on Commercial Fishing in Glacier Bay

In the spring of 1962, to blunt criticism that the NPS was failing to adequately protect natural resources in the parks, Secretary of the Interior Stewart Udall called for thorough, independent studies of NPS science and resource management. Udall appointed a committee, the Advisory Board on Wildlife Management, to recommend a rational and uniform wildlife management program for the national park system. The committee consisted of distinguished wildlife scientists and conservationists, and was led by A. Starker Leopold, the son of Aldo Leopold, the famous wildlife biologist. As the primary goal of park management, what became known as the "Leopold Report" (1963) recommended that "the biotic associations within each park be maintained, or where necessary, recreated, as nearly as possible in the condition that prevailed when the area was first visited by white man."³²⁵ Udall declared the Leopold Report to be the official policy of the NPS, though, according to some, it competed with the venerable Lane letter of 1918.³²⁶ Today's NPS policy on both commercial and

sport fishing may have evolved mostly from the Leopold Report.

NPS policy adopted in 1966 called for the management of natural areas of national parks "... so as to conserve, perpetuate, and portray as a composite whole the indigenous aquatic and terrestrial fauna and flora of the scenic landscape."³²⁷ This policy, however, was clearly not reflected in NPS commercial fishing regulations updated later that year.

In September 1966, the DOI gave notice of its intent to "clarify and bring up to date the regulations applicable to the areas administered by the National Park Service, as well as to bring them into conformity with the basic policies of the Department of the Interior relating to administration and preservation of natural resources in areas of the National Park System."³²⁸ The revised and recodified regulations were published in the *Federal Register* in late December. Of fishing, the new regulations stated only the following:

36 C.F.R. § 2.13(a) (1967): Unless further restricted herein or by special regulations, fishing shall be in accordance with the laws and regulations of the State or legal subdivision thereof, within whose exterior boundaries a park area or portion thereof is located, and such laws and regulations which are now or may hereafter be in effect are hereby adopted and made a part of these regulations.³²⁹

Gone was the specific reference that allowed commercial fishing in Glacier Bay N.M. But it was unclear whether the new regulations applied to sport fishing, commercial fishing, or both. Another regulation that addressed business operations in park areas offered some clarification:

36 C.F.R. § 5.3 (1967): Engaging in or soliciting any business in park areas, except in accordance with the provisions of a permit, contract, or other written agreement with the United States, except as such may be specifically authorized under special

³²⁵ Under NPS policies developed in 1964, "natural areas" were those areas managed by the agency primarily for their natural values, as opposed to areas managed for recreational or historical values. Glacier Bay N.P. in its entirety is managed as a natural area. In response to the 1978 "Redwoods Amendment," the NPS jettisoned its tri-partite approach.

regulations applicable to a park area, is prohibited.³³⁰

Commercial fishing operations are indeed businesses, and under this regulation were clearly illegal without specific authorization. However, since NPS officials at Glacier Bay N.M. at the time assumed that the State of Alaska controlled Glacier Bay's waters, these regulations were not enforced. Since the 1960s, 36 C.F.R. § 5.3 has not been changed.

Commercial fishing in Glacier Bay may not have been an issue in the 1960s, but commercial fishermen at Glacier Bay Lodge definitely became one. Commercial fishermen work a hard and dangerous job, and when not working they are known for their ability to party. Sometimes during the usual weekly periods closed to salmon seining in Icy Strait and Cross Sound, seiners would gather at Glacier Bay Lodge.^{ww} The vessels would tie up overnight to the NPS dock and the skippers and crews—each vessel had a crew of about 5—would head up to Glacier Bay Lodge, which in those years served liquor at a bar. A night of what Ranger Russ Cahill termed “drunkenness, vandalism, and petty thievery” often followed, and the NPS threatened to (but did not) close the dock to the seine fleet.³³¹

Partying fishermen at Glacier Bay Lodge in 1967 actually contributed to the Beardslee Islands being designated as wilderness more than a decade later (see Figure 22). The weather was nice during a closure and some 20 seine vessels, each with a large seine skiff on its stern, rafted up at the NPS dock. It was a sight to see, and many photographs were taken. One of those photographs was later used by wilderness advocates as an example of the powerful fishing fleet that might ravage the Beardslee Islands should they not be protected as wilderness. Though it worked, the claim was an exaggeration: there are very few salmon in the Beardslees, and even less interest in catching them.

In 1970, to remind commercial fishermen of the conduct expected of them when in Glacier Bay N.M., Ranger Russ Cahill penned an article for *National Fisherman*. Cahill explained some of the monument's history, the NPS's responsibility to protect its “wilderness aspects,” and briefly noted the different fisheries that occurred. He then reminded fisher-

men that poor behavior at Glacier Bay Lodge would not be tolerated, and cautioned them about encountering bears while beachcombing. Cahill also wrote that rangers watched the activities of a few fishermen very closely. The monitoring had nothing to do with fishing: some fishermen were known to take pot shots at anything that moved, including sea lions. (Sea lions were first sighted in Glacier Bay proper in the early 1970s. Cahill ended the piece with the following: “Most fishermen will agree that a nature preserve, with its unpolluted streams, is a welcome thing these days. The Park Service believes that with a little common sense and effort, fishermen and park managers can work together to preserve one of America's greatest natural areas: Glacier Bay National Monument.”³³²

Cahill recalled later that NPS rangers monitored the marine band on the radio, and it wasn't unusual to render assistance to commercial vessels that were broken down or had an injured crewmember.³³³ In those days, fish prices were generally low, and many fishing vessels were of marginal quality. Breakdowns were fairly common.

In all, the NPS's public attitude toward commercial fishing in Glacier Bay in 1970 could be summed up as: “Welcome, commercial fishermen. Be careful and please obey the rules.” By allowing a commercial industry to develop around Glacier Bay's fisheries resources, the NPS was unwittingly setting itself up for a difficult and controversial fight 20 years later, when it decided the time had come to phase commercial fishing out of the Bay.

The NPS's policy for the management of natural areas was further defined in 1975: “The Service will perpetuate the native animal life of the parks for their essential role in the natural ecosystems. Such management ... will strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals....”³³⁴ This written policy had no *de facto* effect on the NPS's actual stewardship of fisheries resources as they related to commercial fishing in Glacier Bay N.M. Nor did the regulation that forbade engaging in business in park areas.

To the contrary of most stated policies, a 1977 NPS briefing paper on commercial fishing in existing and proposed Alaska national

^{ww} The major salmon seine fisheries in Icy Strait and Cross Sound were closed by the State of Alaska in 1974 for management reasons.

parks specifically stated that commercial fishing was allowed. The policy seemed unambiguous:

Where it has traditionally occurred in the past and where it is not in direct conflict with the perpetuation of other species of life or with the purposes for which the areas are established, commercial fishing will be permitted to continue under State and Federal regulations in all saltwater areas and in inland waters considered navigable.

The briefing went on to state that commercial fishing was permitted in Glacier Bay N.M., and that it was under the “control” of the state.³³⁵ The NPS February 1978 *Management Policies Handbook* simply stated that “Commercial fishing is permitted only where authorized by law.” To the NPS, this meant authorized by Federal law, but the State could also interpret it to read fishing was authorized under its law.

The March 1978 legislation that expanded Redwood N.P. contained wording that reaffirms the NPS’s 1916 Organic Act’s statement of purpose. Heeding this reaffirmation, the NPS embarked upon a thorough revision of regulations in 36 C.F.R. Parts 1 and 2. Regarding commercial fishing, in April 1978, Robert Herbst, Assistant Secretary of the Interior for Fish and Wildlife and Parks in the Carter administration, instructed the directors of the Fish and Wildlife Service (FWS) and the NPS to convene an ad hoc group of fisheries research and management specialists to review and evaluate NPS fisheries policies. The purpose of the review and evaluation was “to gain an understanding of the National Park Service’s fisheries management prerogatives and philosophy while simultaneously providing a fresh, unbiased, and critical analysis of the policies, operations and current status of the fisheries program within the National Park Service.”³³⁶ All task force members were FWS employees, possibly because fisheries research and management talent was scarce in the NPS. Within the task force, the Alaska Area Work Group was detailed to provide input from Alaska.³³⁷

In March 1979 the FWS Ad Hoc Fisheries Task Force submitted its report.³³⁸ Fundamen-

tal was the following statement: “we believe commercial fishing to be an inappropriate activity in the entire National Park System except where it reflects cultural and historical values of the area.” To the task force, commercial fishing was a “non-conforming use of aquatic resources,” particularly when it occurred in “natural zones,” where the “first priority of use of fish resources ... should be the preservation and maintenance of natural ecosystems processes.”^{xx 339} The Task Force defined natural zones as lands and waters managed to ensure that natural resources and processes remain largely unaltered by human activity.³⁴⁰ All of Glacier Bay N.P. fell into this category.

The task force faulted the NPS for the relatively low priority generally given aquatic resource issues, minimal in-house fishery expertise, an inadequate data base, and a lack of aggressive leadership regarding aquatic resources. A consequence of these deficiencies was that individual superintendents “developed diverse interpretations of national fishery policy.”³⁴¹

The task force believed that, except for token cultural and historical fisheries allowed for their interpretive value, commercial fishing should be phased out of natural zones specifically and all other areas generally.³⁴² It thought the NPS had the authority to do so in most areas, and that legislation would be appropriate where such authority was lacking. To bring about such change, however, would require “aggressive leadership” and “strong direction” from Washington, DC.³⁴³

The recommended method to phase out commercial fishing involved the issuance of what later became known as “lifetime access permits” (LAPs) to individual fishermen. Permits would be issued only to fishermen already active in a fishery, would be non-transferable, and would terminate once the owner ceased fishing activity in a park because of retirement, disability, or death.³⁴⁴

In all, the immediate effect of the Ad Hoc Fisheries Task Force on Glacier Bay’s commercial fisheries was minimal, limited to a further defining of the DOI’s view of commercial fishing in national parks and monuments, and suggesting the use of LAPs as a means to phase out commercial fishing.

The Carter administration’s consideration of a gradual phase-out of commercial

^{xx} In referring to the 1978 amendment to the Park Service’s Organic Act, the U.S. District Court in 1997 (*AWA v. Jensen*) concluded that there was no reason to suppose that “nonconforming” means “in derogation of park values and purposes.” The conclusion of the court was upheld by the Ninth Circuit Court of Appeals.

fishing in the national park system ran into a wall on November 4, 1980 when Ronald Reagan was elected president and the Republican Party took control of the Senate for the first time in 26 years. Reagan was a big supporter of developing the nation's natural resources, which he thought was hindered by excessive federal regulation.

Only three days after the election, William Robinson, a fishery biologist with the NMFS Alaska office, wrote to Ross Kavanagh, the fishery biologist in the NPS Alaska office. Perhaps sensing a change in the political winds, Robinson opined that while a phase-out of commercial fishing might be an appropriate policy in a great many national parks and monuments, Glacier Bay N.M. was an exception. In much of Glacier Bay N.M. commercial fishing was the primary economic activity, and its phase-out would alter the lifestyles and severely depress the economies of Gustavus, Hoonah, Pelican and Elfin Cove. As well, a phase-out could be "extremely damaging to developing State-Federal cooperative fishery management." Robinson also warned that a phase-out should not be justified solely on "philosophical grounds"—known more generally as "park values." He recommended that the situation be addressed through the establishment of a work group consisting of representatives of the NPS, NMFS and State of Alaska. The group would identify areas where commercial fishing conflicted or potentially conflicted with other uses of Glacier Bay N.M. or posed any threat of resource damage. It would then formulate a strategy to deal with any such problems and enter into a cooperative agreement to determine which of the members would regulate specific sectors of the commercial fishing industry in Glacier Bay.³⁴⁵ No such work group was established or cooperative agreement ever signed.

Alaska National Interest Lands Conservation Act

Jimmy Carter may have been a lame duck president in December 1980, but with Congress he was about to leave a huge and

enduring mark on Alaska that had profound implications for commercial fishing in Glacier Bay.

On December 2, as one of his last official acts, Carter signed the Alaska National Interest Lands Conservation Act (ANILCA) into law.³⁴⁶ The National Parks and Conservation Association (NPCA) called ANILCA the "conservation victory of the century."^{YY 347}

ANILCA had its origin a decade earlier in the need to move newly-discovered oil from Alaska's North Slope through a pipeline to an ice-free saltwater terminal at Valdez, in Prince William Sound. The 800-mile route passed through lands claimed by Alaska's Natives. To settle these claims, Congress in 1971 passed the Alaska Native Claims Settlement Act (ANCSA), which was engineered by Alaska's Senator Ted Stevens. The legislation addressed Native claims in all regions of Alaska, and established for-profit Native corporations that were allowed to select some 44 million acres of government land and divide a cash payment of nearly a billion dollars. A provision in the legislation—Section 17(d)(2), added to gain the support of the environmental community—authorized the Secretary of the Interior to withdraw up to 80 million acres in Alaska for possible inclusion into the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers systems. Final determination of the lands to be included would be made by Congress. When it finally became law, ANILCA had selected in excess of 100 million acres of lands for inclusion into conservation systems. Among numerous other provisions of the legislation, Glacier Bay N.M. was re-designated as Glacier Bay National Park and Preserve.^{ZZ} ANILCA also designated 41,367 marine acres of Glacier Bay proper as wilderness, including the waters of the Beardslee Islands, which were critical to the local Dungeness crab fishery. How the Beardslee Islands became designated wilderness is a story that, in turn, had its foundation in the Wilderness Act.³⁴⁸

The Glacier Bay wilderness study required by the Wilderness Act was completed by the NPS in August 1971, and the agency's

^{YY} In 2000, the National Parks and Conservation Association changed its name to National Parks Conservation Association.

^{ZZ} Although national monuments and national parks are ostensibly managed under the same regulations, national monuments, which are created by presidential proclamations, are sometimes erroneously viewed to be second tier components of the national park system, behind the national parks, which are created by acts of Congress. In designating of Glacier Bay National Monument as Glacier Bay National Park, Congress proclaimed that the area was of high public value and was to be maintained in an "unimpaired" condition for the enjoyment of present and future generations.



Figure 22: Salmon seine boats tied up at the NPS Bartlett Cove dock, ca. 1970. The roof of Glacier Bay Lodge is visible in the background. (courtesy Charles V. Janda)

recommendation submitted to Congress in August 1972. The recommendation, which did not recommend wilderness designation for the waters of the Beardslee Islands area was considered the basis for Congressional action under ANILCA.³⁴⁹ Furthermore, according to former Superintendent Bob Howe, the NPS at Glacier Bay had determined that the Beardslees were not suitable for designation as wilderness, mostly because of their proximity to all the noise and activity at Bartlett Cove. Another consideration was the ongoing Dungeness crab fishery, which at that time was pretty much limited to Duke Rothwell on the *Adeline*.³⁵⁰

At some point late in the debate over ANILCA, however, some in Congress determined that Glacier Bay might need more wilderness than recommended by the NPS. Likely they were persuaded by the Alaska Coalition, an umbrella group organized in about 1971 that included a broad array of conservation, sporting, religious, labor, and other groups.

The Alaska Coalition's wilderness wish list for Glacier Bay included those recommended by the wilderness study plus the Beardslee Islands.

At the time of the final ANILCA debates, former Glacier Bay superintendent Tom Ritter was superintendent of Voyageurs N.P., and in Washington, DC on NPS business. As someone familiar with Glacier Bay, he was asked (perhaps by NPS Director Russ Dickenson) for his advice on areas that might be considered for wilderness designation. Shown a map of Glacier Bay, Ritter pointed to the Beardslee Islands. He suggested the Beardslee Islands should be designated wilderness because:

- They were environmentally important. While Ritter was superintendent, scientists Lynne Hale and Gerald Wright began work on the first major formal study of Glacier Bay's marine ecosystem.³⁵¹ The report showed the importance of the Beardslee Islands marine ecosystem.

- They were threatened by commercial fishing interests. Ritter was shown a photograph of fishing boats at Bartlett Cove and given the impression that commercial fishing would decimate the Beardslee Islands fisheries resources. Likely the photograph was the one taken by Chuck Janda in 1967 showing a number of salmon seine boats rafted off the dock at Bartlett Cove. When the photograph was taken, salmon seining was permitted in all of Glacier Bay. The seiners, however, had been fishing in Icy Strait and Cross Sound, and had come to Bartlett Cove during a closure to party at Glacier Bay Lodge.
- They were attractive and offered an economical opportunity for wilderness kayaking. Although Ritter did not spend time in the Beardslees while superintendent, he had twice returned to Glacier Bay, and each time thoroughly enjoyed kayaking into the Beardslees.³⁵²

Congress heeded Ritter's recommendations, and the Beardslees were designated as wilderness under ANILCA. The designation was controversial from the outset, and it would be nearly 20 years before the issue was resolved.